REMARKS

The present amendment is prepared in accordance with the new revised requirements of 37 C.F.R. § 1.121. A complete listing of all the claims in the application is shown above showing the status of each claim.

Applicant appreciates the thorough search conducted by the Examiner in examining the above-identified application. Reconsideration is requested in view of the remarks below.

For purposes of appeal, no claims have been substantively amended. As required, claims 4 and 9 have merely been amended to remove the objected to language. The previously considered limitations of previously presented claim 9 are now recited in new claim 43. As such, it is submitted that a further search of the art is not necessary.

Responsive to the Office Action dated July 18, 2005, claims 18, 37 and 41 have been canceled.

No new matter has been added.

In the Specification

In accordance with the Examiner's requirement, applicant has canceled the amended language of the specification in the paragraph at page 17, line 18 and in the paragraph at page 19, line 11, lines 4-5 of the previous amendment.

No new matter has been added.

In the Drawings

For clarification purposes only, applicant has attached hereto a complete set of the originally filed drawings, which are currently pending in the foregoing application.

No new matter has been added.

Allowable Subject Matter

Applicant appreciates the allowance of claims 21-23 and 31-33.

The Examiner has also indicated that claims 4-18 are allowable subject to complying with the requirements set forth in the above-identified office action. It is submitted that applicant has amended claim 4 to include the deleted "receiving means on" in line 9 and to amended "mechanism" to read - - means - -. Such amendments in the previous amendment were inadvertent and merely due to typographical and/or clerical errors. In claim 9, applicant has amended "attachment devices" to read - - swivel hooks - - , and has reinserted in line 13 the language - - an end of - - which was inadvertently deleted. Accordingly, applicant submits that claims 4-17 are now in a condition for allowance. Claim 18 has been canceled.

Applicant has added new claim 43 for clarifying that which applicants regard as the invention. Claim 43 includes the limitations of previously presented claim 9 from the Amendment dated June 2, 2005.

As is recited, claim 43 clarifies that at least two attachment devices are attached to an end of the cable within the toilet tank, whereby a first of such attachment

devices connects the cable to a weight, and a second of such attachment devices connects the cable to the internal release means within the tank. It is submitted that claim 43 clarifies that which applicant regards as the invention as is shown in the drawings. Support for claim 43 can be found at least in Figs. 3A and 3B, and in the specification in the amended paragraphs beginning on page 18, line 17, and beginning on page 19, line 11.

No new matter has been added.

35 U.S.C. 103(a) Rejection

The Examiner has maintained the rejection of claims 1, 2, 19, 20, 34-36, 38-40 and 42 under 35 U.S.C. 103(a) as being unpatentable over Coret U.S. Pat. No. 1,614,346, in view of Won U.S. Pat. No. 4,975,988, and in view of Lawrence U.S. Pat. No. 5,289,593. Applicant continues to disagree with the Examiner for the reasons set forth below.

The Invention

Applicant submits that claims 1 and 19 are both directed flushing of a toilet. Claim 1 recites that a foot actuated toilet flushing apparatus includes a pedal, a tank clamp, a cable, and a cable housing encasing at least a portion of the cable. The pedal has a top plate pivotably attached to a base plate, and first and second rollers. The tank clamp is positioned on a backside edge of a tank of a toilet and extends into the interior of such tank, whereby this toilet tank has an internal release means therein. The cable resides in the pedal, extends out the base plate and extends into the interior

of the toilet tank, and is held in place by the tank clamp. A critical feature of the invention is that the cable residing inside the toilet tank is connected to the internal release means therein. That is, the connection between the cable and the internal release means is made inside the toilet tank, not outside. Upon applying pressure by foot to the top plate of the pedal, a length of the cable is increased within the pedal and decreased by such length inside the toilet tank to activate the internal release means and effect flushing of the toilet.

Claim 19 is directed to a foot actuated pedal apparatus that includes a top plate pivotably attached to a base plate with first and second rollers in the top and base plates, respectively. The apparatus also includes a cable having one end affixed to a position on the base plate inside the pedal, and having another end affixed to a flushing release mechanism of a toilet that is external to the pedal for effecting flushing of the toilet. Upon applied pressure applied to the top plate, a length of the cable is increased within the pedal and decreased by such length external to the pedal to effect flushing of the toilet.

The Coret Patent

Coret is directed to a foot actuated device connected to the external flushing lever of a toilet. Coret discloses a tank 2 having a lever 4 pivotally mounted 5 on a support 6 (Col. 1, ll. 38-46 and Fig. 2.) The entire lever 4 is outside the toilet tank. The foot operated flushing device of Coret includes a chain 7 within a vertical tube 8 that is attached to the lever 4 at an outer end thereof. (Col. 1, ll. 47-53 and Fig. 2.) In

operation, by pressing down on the treadle 25', the treadle lever 25 is caused to rotate in one direction and lever 24 operate in an opposite direction to pull down on chain 7 for actuating the external lever 4 to flush the toilet. (Col. 2, ll. 84-98.)

The Won Patent

Won is limited to a toilet seat lifting mechanisms 10 for lifting and lowering a toilet seat assembly, wherein the operating mechanism of the toilet seat, when operated, raises the seat and locks it in position until the operator disengages or unlocks the locking position allowing the seat to lower wherein as the seat is lowered a dampening device is provided to prevent slamming of the toilet seat. (Abstract, Col. 2, l. 16 to col. 3, l. 10.) As shown in Fig. 2, the toilet seat lifting mechanism 10 is installed on a toilet pedestal 20 that includes a typical toilet seat 60 and toilet seat cover 50. Lifting mechanism 70 comprising a hinge member 90 is installed adjacent the rear hinge of the toilet seat 60, and a cable mechanism 100 is connected at one end to the hinge 90 and at the other end to the foot actuated lever mechanism 80. (Col. 5, ll. 53-66.) The foot actuated lever mechanism 80 has a lever 84 whereby the cable 100 passes through the end of the lever adjacent fastener 84b, continues into the base 81 of the lever 84, around a pulley 100c, around another pulley 100b, and is anchored at position 84a of lever 84. (Col. 6, ll. 30-45 and Figs. 3-4.) That is, applicant submits that the Won patent does not disclose or even suggest a foot actuated device for flushing a toilet as is currently claimed. Again, it is limited to lifting and lowering a toilet seat.

The Lawrence Patent

Lawrence is directed to an automatic self-lowering apparatus for lowering a toilet seat and/or lid. (Col. 1, ll. 5-6 and 39-43.) It teaches that a toilet lid 22 is provided with a rearward-extending lid arm 30, and/or a toilet seat 20 is provided with a rearward-extending seat arm 40, whereby these arms are respectively connected to cables 50, 50'. (Col. 3, ll. 1-40, and Figs. 1, 3 and 4.) Cables 50, 50' enter plastic sleeves 55, 55' and are secured to tank brackets 14A, 14C, respectively, and cable 50 is held in the tank by a second bracket 14B. The cables 50, 50' are secured to weights 90, 90' that moves up and down with the flushing of the toilet. (Col. 3, ll. 12-55 and Fig. 4.) Upon pressing down on a lever 18, water in tank 14 falls rapidly causing weights 90, 90' to pull cables 50, 50' downward, which in turn pulls arms 30 and/or 40 for lifting lid 22 and/or seat 20, respectively. As water slowly refills tank 14, the effective weight of weights 90, 90' slowly decrease, thereby slowly decreasing the torque applied by arms 30, 40 for lowering the lid and/or seat. (Col. 3, l. 66 to col. 4, l. 26.)

The Rejection

The Examiner has maintained the rejection of the above claims as being upatentable over the art for the reasons set forth in the Office Action dated November 17, 2004. In the present Office action, the Examiner states that the secondary references do not have to include all of the limitations of the claimed environment in order to be properly combined with a primary reference.

The Examiner states that Coret teaches all of the claimed components for a foot flushing device, i.e., the pedal, connection to the tank at 5 and subsequent connection to the outlet valve. To perfect any of these components as advanced would have been obvious to the ordinary artisan. The examiner states that the cited prior art combination passes the test of motivation in that the perfecting features of the secondary art are all shown used in a toilet environment. Applicant disagrees.

Properly focused, the issues center on what would have been obvious to one of ordinary skill in the art at the time of the invention. "Obviousness is tested by 'what the combined teaching of the references would have suggested to those of ordinary skill in the art.' (quoting *In re Keller*, 642 F.2d 413, 425, 208 U.S.P.Q. 871, 881 (CCPA 1981)). But it 'cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination.' (quoting *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984)). And 'teachings of reference can be combined only if there is some suggestion or incentive to do so.' (quoting, *Id.*)." *In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1599 (Fed. Cir. 1988). Here, the prior art contains none.

Applicant submits that the prior art does not suggest applicant's modification of a foot operated apparatus having a cable connected inside a toilet tank to an internal release, or provide any reason or motivation to make that modification. *In re Regel*, 526 F.2d 1399, 1403 n.6, 188 USPQ 136, 139 n.6 (CCPA 1975) ("there must be some

logical reason apparent from positive, concrete evidence of record which justifies a combination of primary and secondary references") (citing *In re Stemniski*, 444 F.2d 581, 170 USPQ 343 (CCPA 1971)).

We agree with the Examiner that secondary references do not have to include all of the limitations of the claimed environment in order to be properly combined with a primary reference. However, in this case the only source of providing a foot operated apparatus having a cable connected inside a toilet tank to an internal release is the present application; there is no prior art teaching that would provide the motivation of connecting a cable inside a toilet tank to the internal release means thereof for effecting flushing of the toilet. *See, In re Geiger*, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987) (obviousness can not be established by combining pieces of prior art absent some "teaching, suggestion, or incentive supporting the combination"); *In re Cho*, 813 F.2d 378, 382, 1 USPQ2d 1662, 1664 (Fed. Cir. 1987) (discussing the Board's holding that "the artisan would have been motivated" to combine the references); *In re Deminski*, 796 F.2d 436, 443, 230 USPQ 313, 316 (Fed. Cir. 1986) (impropriety of hindsight reconstruction); *In re Donohue*, 766 F.2d 531, 534, 226 USPQ 619, 622 (Fed. Cir. 1985) (referring to the "suggestion or motivation to combine teachings" in rejections for obviousness) (*citing In re Samour*, 571 F.2d 559, 563, 197 USPQ 1, 4-5 (CCPA 1978)); *In re Clinton* 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976) (holding that "a person of ordinary skill in the art would have had sufficient motivation to combine" the separate steps); *In re Boe*, 505 F.2d 1297, 1299,

184 USPQ 38, 40 (CCPA 1974) (discussing "[t]he main motivation for combining" two prior art references).

Moreover, in the Office Action dated November 17, 2004, at page 2, the Examiner has recognized with respect to the Coret patent, "[l]acking is the specific nature of the pedal and its connection to the flush valve." However, the Examiner states that the invention would have been obvious by employing the pedal and connections of Won and the clamp arrangement of Lawrence in lieu of the elements of Coret. As recognized by the Examiner, applicant continues to submit that Coret is directed to a conventional prior art reference at which the present invention is aimed at overcoming (*See,* Specification page 2, lines 7-22) by disclosing a foot actuated device connected to the external flushing lever of a toilet.

It is submitted Coret's connection of the chain 7 to the lever 4 is made outside the toilet. (Col. 1, ll. 38-53 and Fig. 2.) Coret does not disclose, contemplate or suggest connecting the cable at one end to the pedal, running such cable into a toilet tank, and once therein, connecting the other end of the cable to an internal release means inside the tank as is currently claimed. Won is limited to a toilet seat lifting mechanisms 10 for lifting and lowering a toilet seat assembly, and does not disclose or suggest connecting a pedal to a toilet tank flush valve. Similarly, Lawrence is limited to a self-lowering apparatus for lowering a toilet seat and/or lid and also does not disclose or suggest connecting a pedal to a flush valve within a toilet tank.

Applicant continues to submit that none of the cited references, alone or in any proper combination thereof, teach, suggest or contemplate, nor is there knowledge generally available to one of ordinary skill in the art which would have led one to combine the teachings of the references to render applicant's claimed foot actuated device connected to an internal release means within a toilet tank for flushing a toilet. Further, with respect to claim 19, neither Won nor Lawrence, alone or in combination, disclose or suggest combining the teachings disclosed therein with flushing a toilet by affixing a cable to a flushing release mechanism of a toilet for effecting flushing of such toilet.

With respect to the Examiner's comment that to perfect any of these components as advanced would have been obvious to the ordinary artisan, applicant submits that the present invention could not be achieved in view of the prior art without undue experimentation. The Examiner is aware there is usually an element of "obvious to try" in any research endeavor since such research is not undertaken with complete blindness but with some resemblance of a chance of success. Therefore, "obvious to try" is not a valid test of patentability. *In re Dow Chemical Company* (CAFC 1988) 5 USPQ 2d 1529. The same for "motivated to use". *In re Jones* (CAFC 1992) 21 USPQ 2d 1941. Patentability determinations based thereon as a test are contrary to statute. *In re Antonie* (CCPA 1977) 195 USPQ 6. Rather, obviousness must be predicated on something more than it would be "obvious to try" the particular limitation recited in the

claims or the possibility it will be considered in the future having been neglected in the past. *See, Ex parte Argabright et al.* (POBA 1967) 161 USPQ 703.

Further, it is improper to focus on the obviousness of individual components or substitutions, rather than on the invention as a whole, *Kimberly-Clark Corp. v. Johnson & Johnson*, 745 F.2d 1437, 1448, 223 USPQ 603, 610 (Fed. Cir. 1984); *Gillette Co. v. S.C. Johnson & Son, Inc.*, 919 F.2d 720, 724, 16 USPQ2d 1923, 1927 (Fed. Cir. 1990). "[A] rejection cannot be predicated on the mere identification ...of individual components of claimed limitations. Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed."). *Ecolochem Inc. v. Southern California Edison*, 227 F.3d 1361, 1374, 56 USPQ2d 1065, 1075 (Fed. Cir. 2000). The record contains no particular finding as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner as claimed in rejected independent claims 1 and 19.

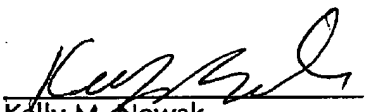
In view of the foregoing, it is submitted that applicant's invention is unobvious and would only be found based on applicant's own disclosure, which, of course, is improper as a hindsight reconstruction of applicant's invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983) (Hindsight based on reading of the patent in issue may not be used to aid in determining obviousness), *Al-Site Corp. v. VSI International, Inc.*, 174 F.3d 1308, 1324, 50 USPQ2d 1161, 1171 (Fed. Cir. 1999) (hindsight and the level of ordinary skill in the

art may not be used to supply a component missing from the prior art references). One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

It is for these reasons that applicant submits that neither Coret, Won nor Lawrence, alone or in any proper combination thereof, render obvious the present invention. In view of the foregoing, and under the applicable patent law in this area, it is respectfully submitted that the claims are properly allowable under 35 USC 103(a).

Applicant submits that the application is in a condition where allowance of the case is proper. Reconsideration and issuance of a Notice of Allowance are respectfully solicited. Should the Examiner not find the claims to be allowable, Applicants' attorney respectfully requests that the Examiner call the undersigned to clarify any issue and/or to place the case in condition for allowance.

Respectfully submitted,



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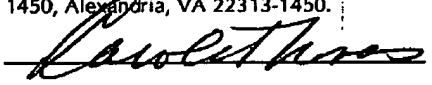
Name: Carol M. Thomas Date: August 12, 2005 Signature: 

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